

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 147 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

YAHYABHAI KURBANBHAI CHINWALA

Versus

ABDULLABHAI YAHYABHAI PAPAD

Appearance:

MR GM JOSHI for Petitioner

MR DD VYAS for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/03/97

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. D.D. Vyas,
Ld. counsel appearing for the respondent.

2. The petitioner being the tenant of the suit premises filed Small Cause Civil Suit No. 134/1996 in the Small Cause Court (Additional) at Surat inter-alia for obtaining relief for permanent injunction restraining

the defendant (respondent) herein from demolishing or damaging in any manner the suit premises or any part thereof and prayed for interim injunction as per Exh. 5. The trial Court granted status-quo to be maintained by the parties as per order dated 20/7/1996. But the learned Third Extra Assistant Judge and Additional Sessions Judge, Surat by his order dated 17/12/1996 set aside the said order and directed the petitioner to pay the cost of the respondent. That is how the petitioner-tenant is before this Court in this revision application u/S. 115 of the C.P.C.

3. It prima-facie appears that the relationship between the parties as that of tenant and landlord is not disputed. The notice of demolition was given by the Surat Municipal Corporation to the respondent on the ground that the suit premises or part thereof became dangerous. The notice further stated that if the respondent-landlord did not demolish the premises, it would be demolished by the Surat Municipal Corporation at the cost of the respondent.

4. The learned Appellate Judge appears to have focussed his attention on the allegations made in the plaint and the injunction application revolving round the fact that the respondent-landlord had adopted or was likely to adopt the ways and means other than due procedure of law for obtaining vacant possession of the suit premises. However, the learned Appellate Judge appears to have failed to focus his attention on the notice of demolition given by the Surat Municipal Corporation in its true perspective. It is apparent that the Surat Municipal Corporation is not a party to the suit proceedings. In that view of the matter what was required from the respondent was to see that the respondent did not take law in his hands and recover possession of the suit premises by means other than due procedure of law. The appellate Court could have visualised this aspect of the matter and while confirming the status-quo order could have also observed that the status-quo would not be binding to the Surat Municipal Corporation, who was not party in the suit proceedings. Under such circumstances it clearly appears that the appellate Court's order is in excess of the appellate jurisdiction vested in the said Court. Hence, following order is passed :-

The order passed by the appellate Court, the learned 3rd Extra Assistant Judge and Additional Sessions Judge, Surat in Misc. Civil Appeal No. 132 of 1996 is hereby quashed and set aside and the trial Court's order

is modified as under :-

The status-quo shall be maintained by the parties till the final disposal of the suit with a rider that such an order will not be binding to the Surat Municipal Corporation, who has not been a party to the suit proceedings as also the consequent proceedings, namely the present revision application.

The suit shall be heard and decided as expeditiously as possible.

There shall be no order as to cost all throughout.

Rule made absolute in the aforesaid terms.

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